UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

COSTCO WHOLESALE

Employer-Petitioner

and Cases 21-RM-2667
21-UC-415

TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS,
LOCAL NO. 542 A/W THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO, CLC

Union

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was conducted before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Union is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

Issues:

The Petitioner in Case 21-UC-415, seeks to clarify that the Miramar facility employees are not an accretion to any existing unit or former unit at the Chula Vista facility and that, under ***Gitano***, 308 NLRB 1172 (1992), there is no obligation to recognize a union as the collective bargaining representative of the Miramar employees. Petitioner also contends that an election should not result under the RM Petition because the management operation that opened the Miramar facility was separate and distinct from the warehouse management that opened the former Chula Vista facility and elected to close the existing Chula Vista facility.

The Union argues that both the RM and the UC petitions should be dismissed. The Union contends that evidence shows an agreement or established practice of the parties concerning unit placement of various individuals. Moreover, the Union argues that during every movement of employees, the employees were covered by the collective bargaining agreement, which covers business delivery operations.

Conclusions:

Based on the below-noted considerations, the Petition in Case 21-UC-415 is granted insofar as it seeks to clarify that the employees employed by the Employer at 7130 Miramar Road, San Diego, California are excluded from the contractual units consisting of employees employed by the Employer at the current membership warehouse located at 1130 Broadway, Chula Vista, California (the "New Chula Vista Member Warehouse" or "Store 781"); and the former membership warehouse located at 1144 Broadway, Chula Vista (the "Old Chula Vista Member Warehouse" or "Store 405").

Because of this unit clarification, the petition in Case 21-RM-2667 will be dismissed.

Background Facts:

The Employer is a Washington corporation engaged in the wholesale club membership business with facilities throughout the United States. As part of its operations, the Employer has a facility at Chula Vista, California (Store 781) and Miramar Road, San Diego, California (Store 787). Twenty–five miles separate the Chula Vista facility from the Miramar Road facility. The Employer maintains a total of approximately 99 warehouses in California, 37 of which are covered by a collective-bargaining agreement with the Union.

The history of business delivery in the San Diego operations begins with the Price Club. The Price Club started in 1976 in San Diego as a wholesale club membership business. In 1990, the Price Club relocated a warehouse in Santee, California, and built a new Santee facility which for the first time included a business delivery department. The Union represented the employees at this warehouse.

Three or four years later, the Employer closed this Santee facility including the business delivery department. The Employer relocated the operation to 19th Street in National City on company-owned-property. The employees, product, and assets were moved. The facility remained covered by the collective-bargaining agreement. Twenty-five miles separated the Santee facility from the National City facility. All of the Santee employees and trucks moved to the new National City facility. In 1993, the Price Club merged with Costco Wholesale and assumed the name Price Costco for a limited period.

Subsequent to the merger, the National City facility was moved to a second location at 24th Street in National City. The employees, product and assets moved from 19th Street to 24th Street. The collective-bargaining agreement remained in effect.

Before the merger, all 45 of the Price Club facilities were represented by the Union. None of the Costco facilities were so represented. Since the merger, the Employer has opened up 22 new warehouses. There is no Teamsters representation at any of the 22 new warehouses opened since the merger. There are no transfer rights or bumping rights from Union-represented facilities to non-Union represented facilities.

In 1997 or 1998, the National City facility operation was closed down. It merged into the Chula Vista warehouse 405, a facility five miles from the prior National City location. All of the employees and trucks made the move to Store 405 when the National City operations closed. Business delivery relocated from National City to Store 405 at this time. The collective-bargaining agreement remained in effect.

Business delivery was a unique component of Store 405. Supervised by separate and distinct management from warehouse management, business delivery specialized in the carrying and selling of business items. This Chula Vista arrangement was unique to California operations to the extent that the Employer operated the business delivery as another department within the warehouse facility.

The Relocation from Store 405 to Store 781:

Over time, the Employer recognized that maintaining business delivery within Store 405 was not profitable. Therefore, a decision was made to liquidate the business delivery department. By happenstance, this decision occurred at the same time as the move to the new facility, Store 781. As a result, the Employer simply maintained the business delivery services until the closure of the Store 405 building. Employees previously working in business delivery were absorbed into the new Store 781 facility, absorption facilitated by new business enterprises which included a pharmacy, the sale of rotisserie chicken, and increased sales in general. These transition plans were crafted and executed by upper

warehouse management. Business delivery operations ceased in the Store 405 facility on October 15, 2004.

Around July or August of 2004, Jaime Vasquez, business agent for the Union, contacted the Employer about the relocation of the Chula Vista member warehouse. Vasquez expressed his position that the relocation from Store 405 to Store 781 was a continuation of the business and that the Union expected Store 781 to be a union facility. At a later meeting within a month or so, the Union stated that in its view, it would be the collective-bargaining representative at any new business delivery facility. There was no Miramar business delivery facility at this time and no one had been hired for the Miramar Store 787 facility.

The Employer's position was that Store 405 business delivery employees were Chula Vista employees. Contract language had been negotiated to allow these employees the right to use their seniority to bump into other positions when their position was eliminated. According to the Employer, the contract language negotiated was intended to permit employees to exercise that clause in the contract and to allow the business delivery employees from Store 405 to move in and merge into another position once Store 405 closed down and the operation moved to the new Store 781. Accordingly, the Employer continued to apply the collective-bargaining agreement. Thereafter, all of the workers from Store 405 exercised their bumping rights and they then went over to the new Store 781 in Chula Vista.

Several aspects of the transition from Store 405 to Store 781 are to be noted. First, the new Store 781 warehouse has additional departments that the old 450 warehouses did not have. Second, the new Store 781 warehouse does not utilize any drivers. Third, the Store 405 employees did not have to make transfer requests, fill out applications, or turn in their old evaluations or attendance records. Fourth, interviews were not required. Finally, the

Store 405 drivers and pickers were not utilized as drivers and pickers at Store 781, because the opportunities did not exist.

The Miramar Store 787 Facility:

The Miramar facility, or Store 787, is managed by Robert Clark as Warehouse Manager. Prior to his Miramar position, Clark served as a warehouse manager at the Buena Park location[1] for 5 years and, prior to Buena Park, served as assistant warehouse manager at Chula Vista's Store 405.

The decision to open up a San Diego business delivery location had been considered for years by the Employer. Eventually, space for a business delivery location was found in July 2004 at the Miramar location.

In order to staff the new Miramar facility, the Employer took several steps. Advertisements were placed on the Internet and responses were received from across the country. Transfer requests were sent out and current employees who wanted to work at the new location were interviewed.

In staffing the Miramar facility, Clark tried to give the Chula Vista employees first right of refusal. If they were qualified for the position and the position was available, management talked to them to see if they would like to transfer to the new Miramar store. According to Clark, he had no obligation under the collective-bargaining agreement to automatically transfers employees from the former Store 405 business delivery operation, to the Miramar store, 787 facility.

Of the nine to twelve pickers who had worked at the 405 facility, three submitted transfer requests for Store 787, and Clark interviewed two of the three applicants.

[1] The Employer operates a second California business delivery center in Buena Park, California. The Buena Park facility is a closed environment without walk-in traffic for customers. The bargaining unit classifications at Buena Park are marketers, administrative (payroll, sales audits, accounts receivable), pickers, drivers, stockers, and forklift drivers. The Miramar facility does not share any employees or supervisors with the business delivery facility in Buena Park. Buena Park is 98 miles from Miramar.

According to Clark, the pickers who applied for a transfer expressed that they liked the Miramar operation and wanted to have an opportunity to grow with the business. Clark testified that the pickers who did not put in for a transfer wanted to stay at the new facility because it was either closer or they thought they could get a better shift for themselves; and that the 405 pickers who did not submit a transfer request wanted to stay at the new Chula Vista facility because it was either closer or they thought they could get a better shift for themselves.

There are no order takers at the Miramar facility. Instead, orders are taken for the Miramar facility either by phone, fax or via the web. These requests are handled at a call center in Issauqah, Washington. There were order takers that made transfer requests to the Miramar facility. Only one order taker, Tony Smith, was transferred to Miramar. Smith worked as a stocker at Miramar. After a period of time, Smith decided that he did not understand all of the different costs and jobs associated with working out of Miramar. As a result, he decided to return to Chula Vista.

While the Miramar facility employs marketers, no marketing employees worked at the Chula Vista facility. As a result, no Chula Vista marketing employees applied to the Miramar location. Clark hired his marketing employees by transferring two people from other sources.

The Miramar facility is separate and distinct from the old Chula Vista 405 Store and the existing Chula Vista Store 781 in several ways. Store 405 targeted small restaurants and day care centers because they carried refrigerated products. The Miramar facility cannot serve this customer base because it does not carry refrigerated products. As a result, many of these accounts have been lost.

Miramar's business strategy has thus shifted, in part of because of 6,000 additional items that are being bought in to the store. The Employer's new business delivery focus will be on business office items, including the specialized business needs of attorneys.

With respect to orders, Store 405 receives all merchandise at the location itself. The facility did not have outside help for processing orders. At the Miramar facility everything is done by phone or fax in Issaquah, Washington, or via the web site. During the day, Store 405 had member access[2] whereas the Miramar facility does not have any member access at all.

Miramar has its own receiving department. The business delivery department at 405 did not have its own receiving department. Miramar does not have seasonal employees. Store 405 had seasonal employees-pickers who were not bargaining unit employees.

Of significant note, there is no day-to-day interchange of employees between any other Costco warehouse or business delivery facility and the Miramar facility. Nor is there any day-to-day interchange of supervisors between the Miramar facility and the other warehouse or business delivery facilities.[3]

At Miramar, the routes for drivers are random and computer-generated. Store 405 drivers appear to have maintained the same consistent driver routes. In contrast, the new Chula Vista Store 781 employs routers, who set the sequence for the deliveries by the drivers. There are no routers at the Miramar facility.

Few assets were transferred from Store 405 to the Miramar facility. The four business delivery trucks in Chula Vista were sold off. As a result, the Miramar facility is

[2] Member access refers to the retail sale of goods to "members." Thus, store 405 was a membership store, while Miramar makes sales directly to customers, but without a "membership" requirement

[3] Don Ozaki served as the Assistant Manager of Business Delivery for Store 405. Ozaki applied for a new position with the new Miramar facility but was not selected by the Employer. Clark interviewed Ozaki for the Miramar position.

leasing new trucks for its operation. The Miramar facility also purchased new physical assets such as shelves, racks, and ladders and mops. The only equipment moved from Store 405 to the Miramar facility appears to have been a battery and a wrap machine.

The Hayward Business Center:

The Employer's only business center is known as the Hayward Business Center (Hayward). Staffed entirely by bargaining unit employees, Hayward utilizes cashiers, order takers, receivers, pickers, administrative workers, stockers, print shops, forklifts drivers, and truck drivers.

The Miramar facility does not share any employees or supervisors with Hayward. Located about 700 miles from Miramar, Hayward is the result of the merger of three warehouses or business delivery centers in Northern California into what is now the Hayward facility. The Union had been the collective-bargaining representative for these three facilities before the merger.

Procedural History:

Administrative notice is taken that on August 11, 2004, the Union filed an unfair labor practice charge in Case 21-CA-36741, alleging that Costco violated Section 8(a)(5) by refusing to apply the collective-bargaining agreement to the new Miramar Business Delivery facility. Thus, the unfair labor practice charge contends that representation must be extended from the old Chula Vista Member Warehouse to the newly opened Miramar Business Delivery Facility—the central issue to be resolved in this case. Notice is also taken that the investigation of Case 21-CA-36741 is in abeyance, pending the outcome of the instant decision.

On September 22, 2004, Counsel for the Union informed Counsel for Costco that the Union had filed a grievance claiming that the collective-bargaining agreement should

be applied to the Miramar facility. The Union's grievance presumes that representation should be extended to the Miramar facility—the central issue here. Costco refused to arbitrate that grievance because it involved a question of representation. The Union then filed a petition to compel arbitration in the United States District Court for the Southern District of California. Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 542 v. Costco Wholesale, Case Number 04 CV 1974 B (RBB).

The Employer filed Petitions in Cases 21-RM-2667 and 21-UC-415 on October 15, 2004, alleging that the Union had made a claim to Petitioner to be recognized as the collective-bargaining representative for the new Costco Business Delivery Warehouse at 7130 Miramar Road, San Diego, and seeking a unit clarification that the Miramar employees were not so represented. The Region held a hearing on these two petitions in San Diego on November 17, 2004.

Legal Analysis:

In cases involving new facilities, the Board has applied a rebuttable presumption that a unit at a new facility is a separate appropriate unit. Accretion is disfavored as a policy because such a finding forecloses employees' basic rights to select a bargaining representative. ***Towne Ford Sales***, 270 NLRB 311 (1984)(rejecting union's accretion argument because of lack of employee interchange or common day-to-day supervision between the old and new facility), *aff'd* 759 F. 2d 1477 (9th Cir. 1985). The Board has stated that it "will not, under the guise of accretion, compel a group of employees who may constitute a separate appropriate unit, to be included in an overall unit without allowing those employees the opportunity to express their preference in a secret election." ***Id.*** (citing ***Melbert Jewelry Co.***, 180 NLRB 107, 110 (1969)).

In ***Gitano Group, Inc***., 308 NLRB 1172, 1175 (1992), the Board stated:

> We announce today that when an employer transfers a portion of its employees at one location to a new location, we will no longer define the nature of the transfer in terms of the relationship between the "new" unit and the "old unit" (i.e., whether one is an 'internal spin off" or "partial relocation' from the other). Rather, we will begin with the Board's long held rebuttable presumption that the unit at the new facility is a separate appropriate unit. Assuming that the presumption is not rebutted, we will then apply a single fact based majority test to determine whether the respondent is obligated to recognize and bargain with the union as a representative of the unit at the new facility. If the majority of the employees in the unit at the new facility are transferees from the original bargaining unit, we will presume that those employees continue to support the union and find that the employer is obligated to recognize and bargain with the union as an exclusive collective bargaining representative of the employees in the new unit. Absent this majority showing, no such presumption arises and no bargaining obligation exists.

In ***Gitano***, the Board, in finding the presumption was not rebutted, focused on the lack of employee interchange and lack of common day-to-day supervision between the old and new facilities. ***Id.*** at 1176. The mere transfer of a portion of its employees at one location to a new location does not equate with employee interchange. ***Id***. at 1175.

Other factors considered by the Board in ***Gitano*** were: (1) whether employees "worked fairly closely together" with unit employees and that "they were all doing the same kind of work"; and (2) whether the employees performed work different from that of unit employees. *Id*. at 1174. The fundamental concern underlying these factors is to insure that in cases where such an issue is raised the right of interested employees to determine their own bargaining representative will not be thwarted." ***Id. at 1175, citing Safeway Stores,*** 256 NLRB 918 (1981).

This general Board standard is further developed in a series of later cases. For example, the Board has found that the presumption was not rebutted in a case lacking employee interchange and common day-to-day supervision between facilities. ***U.S. Tsubaki, Inc.***, 331 NLRB 327, 328 (2000)(divisions had separate managerial hierarchies and

supervision and limited employee interchange) and ***Armco Steel Company***, 312 NLRB 257, 258 (1993)(employees separately supervised and there was no employee interchange or regular face-to-face contact between facilities).[4]

However, the Board has ruled that the presumption was rebutted in cases marked by significant employee interchange and common day-to-day supervision. In ***Coca-Cola Bottling Company***, 325 NLRB 312 (1998), daily work assignments were faxed from one facility to the other, employees clocked in at one facility and went to the other, and employees transported goods from one facility to the other. In ***Mercy Health Services***, 311 NLRB 367, 368 (1993), the supervisor at the old facility also supervised employees at the new facility and employees frequently interchanged between the two facilities.[5]

The Board has also required the employer to adhere to an existing collective-bargaining agreement where an employer has relocated an entire bargaining unit to a new facility where a collective-bargaining agreement was in existence at the old facility. ***Rock Bottom Stores***, 312 NLRB 400, 402 (1993)

Employee Interchange

In the present case, there is no record of employee interchange between Store 787 in Chula Vista and the Miramar facility. Employees at the Miramar Business Delivery facility do not work at Store 787. Nor do employees at Store 787 work at the Miramar Business Delivery facility. And there is clearly no employee interchange between Miramar and the old Store 405 because Store 405 is closed.

There have been a series of transfers between Store 405 and the new Miramar facility, but these transfers do not reflect an ongoing interchange. Rather, these transfers took

[4] ***Armco and U.S. Tsubaki*** are UC petition cases. While ***Gitano*** was an unfair labor practice proceeding, the Board has since clarified that the ***Gitano*** analysis is equally appropriate in UC proceedings. ***U.S. Tsubaki***, 331 NLRB at 328 and ***Armco***, 312 NLRB at 259-260.
[5] ***Coca-Cola Bottling*** is a UC petition case while ***Mercy Health*** is an unfair labor practice case.

place as part of the initial staffing of the new Miramar facility. Since the initial staffing, no employees have transferred from Store 787 in Chula Vista to the Miramar facility.

Common Day-to-Day Supervision

In the instant case, business delivery and warehouse management are separate operations with a separate management chain of command. Miramar Warehouse Manager Clark reports to business delivery management. Neither Clark nor any Miramar supervisors has any authority over Store 787 in Chula Vista. It is also the case that no Miramar managers exercised authority over business delivery managers in the old Store 405 in Chula Vista because Store 405 operations were closed before the Miramar facility opened for business.

Employee Contact

Twenty-five miles separate the Miramar facility from Store 787 and the former Store 405. There is no record evidence that Miramar business delivery employees worked closely with either Store 405 employees or the new Store 787.

Type of Work

The work performed by employees at the Miramar facility is distinct from the work at Store 787. The operations provide different services and products. The employees at the Miramar Business Delivery facility are involved in filling orders and delivering products to business members. Employees at the New Club Vista Member Warehouse, on the other hand, are involved in operating a warehouse store that is open to wholesale club members. Thus, they have different positions, skills, and functions. For example, the Miramar facility employs pickers, drivers, and marketing employees while Store 787 has no such positions.

The work is also different between the Miramar facility and the old Store 405. The Miramar Store has marketing employees whose task is to generate business, whether it be generating new business or expanding existing business. There were no marketing employees

at Store 405. There are no order takers at Miramar, although order takers were employed at Store 405. The Miramar employees are increasingly catering to lawyers and other businesses. Store 405 employees handled refrigerated products and thus worked with small restaurants and day care centers, while Miramar does not handle refrigerated products. The Miramar facility does not have dealings with members at all because orders are received by phone or fax in Issaquah, Washington. Miramar has its own receiving department while Store 405 did not have its own receiving department.

In light of the above facts, it is concluded that Miramar's presumed status as a separate appropriate unit has not been rebutted.

Majority Test

Under the ***Gitano*** standard, the Board then considers a simple fact-based majority test to determine whether an Employer is obligated to recognize and bargain with the union at the representative at the new facility. Absent this majority showing, no such presumption arises and no bargaining obligation exists. ***Id***. at 1175.

Here, the Union clearly lacks majority status at Miramar. The record is clear that Miramar utilizes some 43 employees and plans to hire an additional 8 to 10 employees. Of the current 43 employees, only 14 (33%) transferred from the Chula Vista Member Warehouse. Therefore, it is concluded that the Union lacks majority status at Miramar.

In its brief, the Union suggests that ***Gitano*** is not determinative, and that the conduct of the Employer should be reviewed for conformity with ***Rock Bottom Stores, Inc.***, 312 NLRB 400 (1993), where the Board obligated an Employer to apply a collective-bargaining agreement at a new facility. While the facts are somewhat similar between this case and those in ***Rock Bottom Stores, Inc.***, the material elements present in ***Rock Bottom Stores, Inc.*** are absent in this Employer's conduct.

First, ***Rock Bottom Stores*** involved a transferee complement constituting 56 percent of the employee work force at the new facility. Here, only 33 percent of the Miramar employees were transferees from the Chula Vista Member Warehouse. Second, the entire bargaining unit from Store 405 was not relocated to Miramar as was the case in ***Rock Bottoms Stores***. Third, the operations in the new facility in ***Rock Bottom Stores*** were substantially the same as those at the old facility. Indeed, the parties stipulated to this fact. Here, the parties are in agreement that the Miramar operations are not a mirror image of the old Store 405 activities nor do they bear any resemblance to the new Store in Chula Vista.

As a result, ***Rock Bottom Stores, Inc***. is of limited value in resolving this petition because the fact pattern involves a different type of relocation. ***Gitano*** however immediately presents a closer example of two separate facilities with functional autonomy.

Past Practices

It is noteworthy that the Employer has frequently moved the business delivery department from Santee to National City to Chula Vista over the last 10 to 15 years. From the initial time of the Santee location until the present dispute, the employees had been represented by the Union and covered by a collective-bargaining agreement.

In moving the business delivery department from Santee to 19th Street in National City, a distance of 25 miles, all of the employees, product and assets moved. The 19th Street National City facility was a stand-alone operation. There was no issue of the facility continuing to be covered by the collective-bargaining agreement. In 1993, the Price Club and Costco merged, but the collective-bargaining agreement continued.

The Business Delivery Warehouse was moved from 19th Street in National City to 24th Street in National City, California, which was also a stand-alone facility. All of

the employees, product, and assets moved. No issue concerning collective bargaining was raised.

In 1999, the Business Delivery Warehouse moved from 24th Street in National City into the Costco warehouse Store 405, a distance of 5 miles. All of the employees, product, and assets were moved. No issue was raised concerning the collective bargaining agreement. Even though part of the warehouse was devoted to the Business Delivery operation, both parties agree that the move did not make sense as a business proposition. In 2004, the Employer closed down Store 405 and opened up a new warehouse at Store 781.

Unlike earlier moves, the opening of the Miramar Business Delivery facility was not conceived as a relocation of the Store 405 business delivery. The business decision to close Store 405's business delivery was reached independently of plans to acquire a new business delivery site in San Diego. As a result, all of the hard assets, physical equipment, and employees were not moved to Miramar. Miramar was a new, independent, stand-alone business delivery facility. Therefore, the Employer's past practices are of limited value because previous moves had always been accompanied by a complete transfer and relocation of human and physical capital. In the prior relocations, the parties agreed that the collective-bargaining agreement would still apply to the same unit, albeit in a new physical settting.

In short, the opening of the Miramar facility and the acceptance of transfers from Store 405 was different from all other previous moves. Management was different, the customer base was different, and the trucks were different.

There was testimony by Ozaki in the record that Clark announced that Business Delivery was going to be "moving" to Miramar when he met with Store 405 employees on July 28, 2004. However, this testimony is entitled to limited weight for three reasons. First, Clark testified that he went down to Store 405 and announced he would be

accepting transfers from everybody, which is consistent with staffing a new, separate facility. Second, Clark interviewed but did not hire Don Ozaki, the former Business Delivery Manager for Store 405. Clark's failure to hire Ozaki is inconsistent with "moving" Ozaki's department over to Miramar. Rather, Clark's actions are consistent with staffing the new facility. Finally, Ozaki's testimony was that there was a very fluid period surrounding the closing of the Store 405 where employees were resigning, getting job postings, and transferring out. Thus, Ozaki's testimony is inconsistent with an ordered relocation of business delivery to Miramar.

Conclusions:

Under applicable case law, when an employer transfers a portion of its employees from one location to a new location, it is not required to recognize the union at the new facility if: (1) the new facility retains a sufficient separate identity from the prior facility; and (2) the union lacks majority status. Here, the newly opened Miramar Business Delivery facility is functionally and operationally different from the business delivery department in the Old Chula Vista Member Warehouse, and more importantly, employs a different workforce, as two-thirds are new hires or from facilities other than Stores 405 and 787 in Chula Vista.

Compared to Store 787, the Miramar facility is operationally and functionally autonomous—with no common supervision or interchange of employees. And the Miramar facility did not come into operation until after the business delivery department at Store 405 had closed. For these reasons, the Miramar employees are not an accretion of the New Chula Vista Warehouse employees or the old Chula Vista Business Delivery department.

Based on the foregoing and the record as a whole, I find that the employees at the new Miramar facility constitute a separate appropriate unit, do not share a community of

interest with and do not constitute an accretion to the represented employees at the Old Chula Vista facility. Nor do they represent an accretion to the represented employees at the new Store 787.

ORDER

It is hereby ordered that the petition filed in Case 21-RM-2667, be and it hereby is, dismissed.

It is furthered ordered that in Case 21-UC-415, the contractual bargaining units are clarified so as to exclude employees employed at the new Costco Business Delivery Warehouse at 7130 Miramar Road, San Diego, CA 92129.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.76 of the Board's Rule and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, D.C. by 5:00 p.m., EST, on December 29, 2004. The request may not be filed by facsimile.

DATED at Los Angeles, California, this 15th day of December, 2004.

/s/ James F. Small

James F. Small, Acting Regional Director
National Labor Relations Board
Region 21
888 South Figueroa, Suite 900
Los Angeles, CA